**United States District Court**
**District of Nebraska**

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| **John Laettner,**<br>**Don Laettner,**<br>**Denise Laettner,**<br>**Stephanie Laettner Kubit and**<br>**Donald Williams,**<br><br>**Plaintiffs,**<br><br>**v.**<br><br>**Joseph Kishiyama and**<br>**Chaloupka, Holyoke, Snyder,**<br>**Chaloupka, Hoffmeister & Kishiyama,**<br>**PC LLO,**<br><br>**Defendants.** | **Case No. ________**<br><br>**Complaint & Jury Demand**<br>**Trial Location Request** |

Plaintiffs allege:

**Introduction**

1. Plaintiffs engaged Defendant Joseph Kishiyama, a lawyer, and the law firm of which he was an agent, to be their lawyers in a state district court case involving ownership of mineral rights. Defendants undertook the engagement. Professional negligence occurred within the scope of Defendants' services to Plaintiffs. An appeal was taken, a Show Cause Order was not responded to, and the opportunity to reverse an adverse trial court decision was lost. The trial court's decision was erroneous and would have been reversed. Then, Plaintiffs would have been the recognized owners of mineral rights. The lost mineral rights have substantial value. Plaintiffs sue for this value.

**Jurisdiction, Venue, Parties**

2. The United States District Court for the District of Nebraska has subject matter jurisdiction pursuant to 28 *USC* § 1332. Four Plaintiffs are citizens and residents of California and the United States. Plaintiff Williams is a citizen and resident of Oklahoma and the United States.

3. The Defendants are citizens and residents of Nebraska and the United States. There is complete diversity of citizenship between Plaintiffs on the one hand and Defendants on the other. The amount in controversy, exclusive of interest, court costs, and attorney's fees substantially exceeds $75,000.

4. The Plaintiffs are: John Laettner, Don Laettner, Denise Laettner, Stephanie Laettner Kubit, all of whom are siblings. They are the surviving heirs of Ila Mullennix, who died in 2005 in California. Mrs. Mullennix owned, at death, mineral interests in the following described real estate in Sioux County, Nebraska:

> In Twp 35N, R 56 W of 6th PM:
> All of Section 23
> In Section 24: N ½, SW1/4, W1/2SE1/4;
> In Section 25: NW1/4NW1/4
> In Section 26: NE1/4.

The fifth Plaintiff is Donald Williams, an uncle of the first four named Plaintiffs.

5. Title to the real estate surface rights and mineral interests were severed. Plaintiffs engaged Defendants to maintain and protect their mineral rights.

6. The Defendants are Joseph Kishiyama, a Nebraska lawyer (NSBA #23767) and the law firm by which he was employed and upon whose behalf he acted as an agent at all relevant times while providing legal services to Plaintiffs. The law firm's name is Chaloupka, Holyoke, Snyder, Chaloupka, Hoffmeister & Kishiyama, PC LLO. Mr. Kishiyama and the law firm are referred to throughout this Complaint collectively as "Kishiyama." The law firm is responsible for the acts and omissions of Kishiyama under the doctrine of *respondeat superior*.

## Facts

7. In April 2011, Gale F. Henry filed suit in District Court, Sioux County, Nebraska (Case No. CI 11-26) seeking a judgment declaring that he owned all mineral rights and interests associated with the real estate. The Complaint named the following parties as Defendants: All Plaintiffs, Ila Mae Mullennix, Charles S. Williams, Floyd Williams, Ethel Downey, Russell Williams, Lavonne Heming, and all other persons with interests in the real estate.

8. Plaintiffs Answered the Complaint and petitioned to intervene on or about August 19, 2011. Their Petition for leave to intervene was sustained and they became parties. By filing Answers and intervening in the case, Plaintiffs, each and all, asserted their ownership of mineral interests in the real estate in the filings and on the records of the official offices and officers of Sioux County, Nebraska. They did so within 7 years of Ila Mullennix death.

9. The Sioux County, Nebraska, District Court (trial court) rendered Default Judgment concerning certain Defendants on May 24, 2012, the day Defendants entered their appearance as counsel for Plaintiffs. On May 24, 2012, the trial court found that all Defendants were properly served with summonses and lawfully notified of the lawsuit. It further found that certain Defendants had failed to answer, otherwise plead, were in default, and should have default judgment rendered against them. Default Judgment was rendered and entered against these Defendants: Floyd Williams, Ethel Downey, Russell Williams, Lavonne Heming, and all other persons except Plaintiffs and Charles S. Williams, having or claiming any interest in minerals, oil, or gas which may be produced from the real estate. The Court's "Order for Entry of Default Judgment" failed to find and recognize that Ila Mae Mullennix was not served with process and was deceased throughout the Sioux County District Court proceedings and attempted appeals therefrom. The decedent was a named Defendant in the Complaint.

10. The ownership interests of Plaintiffs in the real estate was as follows:

10.1. Donald Williams – 3/32$^{nd}$ received from Charles Williams, Sr., who died in 1938.

5/64$^{th}$ received from Lavern Davison, Charles Williams' Sr.'s wife, who died in 1981. Donald's mineral interests total an undivided 11/64$^{th}$ interest.

10.2. John Laettner, Don Laettner, Denise Laettner, and Stephanie Laettner Kubit, equal and undivided one-fourth interests in:

> 3/32nd interest previously held by Ila Mae Mullennix, their mother, and received by her from her father, Charles William, Sr., who died in 1938, and
> 5/64th received from Lavern Davison, Charles William Sr.'s wife, who died in 1981.
>
> These mineral interests total an undivided 11/64th interest held by Ila Mae Mullennix until her death in 2005 and passed to her children, Plaintiffs John, Don and Denise Laettner and Stephanie Laettner Kubit in equal shares. Ila Mae Mullennix' interests passed to her children upon death in 2005. This passage of interests prevented abandonment of Ms. Mullennix' severed mineral interests for at least 23 years in the future.

11. The lawsuit proceeded after Default Judgment was entered against the parties identified in ¶ 9 above. Trial was conducted to the court without a jury. On August 6, 2013, the trial court rendered judgment against Plaintiffs in this case and in favor of other parties. The judgment contained substantive errors, including factual findings inconsistent with the evidence and decisions contrary to law. These errors included:

11.1. The trial court failed to recognize that Ila Mae Mullennix died in 2005, as was proven by the evidence. It failed to recognize that Plaintiffs, her heirs at law, specifically her children, John Laettner, Don Laettner, Denise Laettner, and Stephanie Laettner Kubit exercised their mineral ownership rights and interests within twenty-three (23) years of the date of her death and within the time period required by Nebraska law, by filing their Complaint in Intervention and Answer and asserting their mineral interests in Sioux County District Court, Case No. CI 11-26. This occurred within the 23 year time period prescribed by law.

11.2. The trial court failed to recognize that Plaintiffs, her heirs at law, specifically her children, John Laettner, Don Laettner, Denise Laettner, and Stephanie Laettner Kubit, exercised their mineral

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ownership rights and interests by filing a Verified Claim of Interest with the Register of Deeds of Sioux County, Nebraska, in 2013.

11.3. The trial court erroneously held that mineral interests of Plaintiffs, which are fee interests, merged with a life estate interest held by Gale F. Henry, holder of a life estate only. The trial court erred by failing to recognize that the doctrine of mergers of titles does not permit fee ownership interests to merge with life estate interests.

11.4. The trial court proceeded to trial and rendered judgment despite a defect in the identities of parties. Gale F. Henry was Plaintiff. Mr. Henry held only a life estate interest. The remainder interests were held by children and next of kin of Gale F. Henry. They were not joined as parties to the litigation. Accordingly, fewer than all owners of interests in the real estate were joined as parties, and because remaindermen with ownership interests were not joined, there was a defect in parties, and fewer than all necessary parties were joined. The Court was called upon to declare the ownership rights and interests of persons in the real estate. Without all persons with such interests joined as parties, the Court's declaratory judgment could not be rendered as the Court lacked subject matter jurisdiction over all interests affected, and lacked personal jurisdiction over all necessary parties. This occurred despite the fact that the evidence at trial proved the remaindermen were not joined, and one remainderman, a child of Gale F. Henry, had died, and his estate had not been probated.

11.5. The Court erred in finding that Plaintiff, Donald Williams, abandoned his rights by neither claiming nor asserting an interest in them despite clear, contrary interests, including Mr. Williams' authorship of a publication in which his ownership interests were asserted. Mr. Williams became the owner of his severed mineral interests in 1938, prior to adoption of Nebraska's dormant mineral interests statues. Mr. Williams actively asserted ownership of his mineral interests throughout his life as was proven at trial.

12. The Court construed and applied *Neb Rev Stat* §§ 57-228 and 54-229, but did so erroneously. It erroneously concluded that the mineral rights interests of the heirs of Ila Mae Mullennix, and those of Donald Williams, were abandoned and extinguished.

**The Appeals**

13. Defendants undertook to appeal the trial court's August 6, 2013 Judgment. A Notice of Appeal was filed September 5, 2013 and docketed as Case No. A-13-000772 by the Clerk of the Nebraska Supreme Court. On October 17, 2013, the Nebraska Court of Appeals issued an Order to Show Cause upon jurisdictional review, finding that the August 6, 2013 Judgment then contained in transcript ordered by Defendants and filed with the Court of Appeals did not provide for resolution of matters affecting Defendants Floyd Williams, Ethel Downey, Russell Williams, or Lavonne Heming. Without a record disclosing disposition of those claims, the Court of Appeals found the August 6, 2013, Order was not final or appealable pursuant to *Neb Rev Stat* § 25-1315. Plaintiffs, as the appealing parties, were ordered to show cause, within fifteen (15) days of October 17, 2013, why the appeal should not be dismissed for lack of jurisdiction. This Order was received by Defendants while they were rendering services to Plaintiffs.

14. Kishiyama failed to respond to the October 17, 2013, Order and failed to disclose it, on a timely basis, to Plaintiffs. A reasonably prudent lawyer, exercising that degree of knowledge, skill, and diligence necessary and appropriate to represent a client would have responded to the Order to Show Cause by one (1) or more of these actions:

14.1. Filed a response to the Order, including an Affidavit disclosing the May 24, 2012, Default Judgment disposing of the interests of Floyd Williams, Ethel Downey, Russell Williams, and Lavonne Heming by default judgment and, therefore, confirming that the August 6, 2013, judgment was a final judgment disposing of all claims, rights, and interests of all parties remaining in the case.

14.2. Filed a Praecipe or request for a Supplemental Transcript to be filed by the Clerk of the Sioux County District Court with the Clerk of the Nebraska Supreme Court, including the May 24, 2012, Default Judgment.

14.3. Otherwise, taking steps necessary and appropriate to show cause why the appeal pending before the Court of Appeals on October 17, 2013, was a proper appeal from a properly appealable final Order.

15. After Defendants failed to respond to the Order to Show Cause for Plaintiffs, the Nebraska Court of Appeals dismissed the September 5$^{th}$ appeal. This dismissal occurred November 5, 2013. Kishiyama learned of dismissal promptly thereafter but did not inform Plaintiffs.

16. After learning of the appeal's dismissal by the Court of Appeals because cause had not been shown to demonstrate why the August 6, 2013 Judgment was an appealable final Order, the District Court's Judgment became final. It was no longer subject to appeal.

17. Defendants, and specifically Mr. Kishiyama, did not disclose to Plaintiffs that the Court of Appeals had dismissed their appeal. Instead, he concealed this action. Kishiyama attempted to return to District Court for a new final Order. The trial court refused his request, observing its May 24, 2012, Default Judgment and August 6, 2013, Judgment fully and finally disposed of all claims of all parties, and was a final Judgment. This was not immediately disclosed to Plaintiffs by Kishiyama.

18. Defendants then attempted, again, to appeal the trial court's refusal to enter a new Judgment. He did so by docketing Appeal No. A-15-000073 in February 2015. This appeal was promptly dismissed by the Nebraska Court of Appeals in February 23, 2015. This second dismissal was concealed from Plaintiffs until May 2015.

19. On August 4, 2015, in another attempt to achieve appellate review, Kishiyama filed a pleading with the Nebraska Court of Appeals entitled "Appellant's Notice and Motion to Set Aside and/or Vacate the Dismissal of Appeal." This Notice and Motion were accompanied by the Declaration of Joseph A. Kishiyama. On August 10,

2015, the Nebraska Court of Appeals overruled the Motion finding that the "Motion of Appellant for Rehearing [is] overruled as untimely. See *Neb Ct R App P* § 2-113."

**Negligent Acts**

20. Defendants were professionally negligent in the performance of their duties to Plaintiffs as their clients. They violated the standard of care to which Defendants were held as Lawyers engaged under similar circumstances. Defendants' negligence included:

20.1. Failure to respond to the Court of Appeals by providing the Court with a Supplemental Transcript disclosing the May 24, 2012, Default Judgment, or failing to respond to the Order to Show Cause with an appropriate pleading and evidence disclosing the Default Judgment and informing the Court that a Supplemental Transcript was requested, or otherwise providing the Court with information from the District Court's file disclosing that the interests of those persons identified in the Court of Appeals' Order to Show Cause had been fully, finally adjudicated.

20.2. Failure to inform Plaintiffs that the Court of Appeals dismissed their appeal on November 5, 2013.

20.3. Undertaking actions in District Court to attempt to secure a new Order from which an appeal could be taken when no Nebraska procedure or law authorizes such actions.

20.4. Concealment of efforts to obtain a new appealable Order or concealing the fact that no Nebraska law authorizes this procedure, and the outcome of those efforts.

20.5. Failure to disclose the District Court's Order overruling the unauthorized Motion.

21. In addition to the foregoing acts and omissions, Defendants failed to advise Plaintiffs to file, prior to the commencement of trial in August 2013, a Verified Statement of Interests, or other appropriate filing in the Office of the Register of Deeds of Sioux County, Nebraska, or to initiate, or domesticate, or register by appropriate filings

proceedings concerning the death of Ila Mae Mullennix with filings in County Court, Sioux County, Nebraska to disclose that Ila Mae Mullennix was deceased, and all her rights, title, and interest, in her mineral interests to the real estate were passed to her heirs, the four Laettner siblings who are Plaintiffs.

**Damages**

22. As a direct, proximate result of Defendants' actions and negligence, the Sioux County District Court's August 6, 2015, Judgment became final and non-appealable and Plaintiffs' severed mineral interests were erroneously declared abandoned by the trial court. These errors would have been corrected on appeal but the right to appeal was lost as described above. Plaintiffs' lost mineral rights and interests in the real estate had a fair and reasonable market value of at least $5,000,000, and a future value of substantially more.

23. In addition, Plaintiffs incurred legal expenses to discover, understand, evaluate, and attempt to remediate the consequences of Defendants' professional negligence. These costs, which are not yet fully ascertained and constitute special damages. Leave is requested to plead these special damages in full when known and not later than the time of the final pretrial conference in this case. These costs include:

- 23.1. Professional services to evaluate the case and its status and attempt remediation of damages.
- 23.2. Costs to procure the transcripts and bill of exceptions of the proceedings in State Court.
- 23.3. Investigative costs.

24. In the event a Motion to Dismiss is filed, Plaintiffs hereby make reference to, and necessarily implicate in this pleading:

- 24.1. The docket sheets and entries and all contents of the court file of the District Court of Sioux County, Nebraska, in Case No. CI 11-26.
- 24.2. The docket entries and docket sheets and all contents of the Court file of the Nebraska Supreme Court/Court of Appeals maintained by

the Clerk of the Supreme Court in Case numbers A-13-000772 and A-15-000073, respectively.

Judicial notice of these filings is requested. Leave to amend is requested in the event of a ruling sustaining a *F R Civ* 12(b) Motion attacking this Complaint.

**Requests for Relief**

25. On the foregoing basis, Plaintiffs respectfully request judgment against Defendants, jointly and severally, for not less than $5,200,000, prejudgment interest to the extent permitted by law, and costs.

**Jury Demand**

26. Plaintiffs respectfully demand trial by jury.

**Trial Location Request**

27. Plaintiffs request trial at Lincoln NE.

October 12, 2015.

John Laettner, Don Laettner,
Denise Laettner, Stephanie Laettner
Kubit and Donald Williams, Plaintiffs,

By: /s/ David A. Domina

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